

JAN LISTER,)
)
 PLAINTIFF,)
)
 vs.) **CASE No. 03-CV-767-CVE-FHM**
)
 JOANNE B. BARNHART,)
)
 Commissioner of the Social)
 Security Administration,)
 DEFENDANT.)

REPORT AND RECOMMENDATION

On November 10, 2003, Plaintiff filed a Complaint and Pauper's Affidavit in this court. [Dkts. 1, 2]. The undersigned United States Magistrate Judge entered an Order to Cure Deficiencies on November 14, 2003, in which Plaintiff was instructed on the proper procedure for requesting leave to proceed *In Forma Pauperis*. [Dkt. 4]. Plaintiff's "Subsequent Motion for Leave to Proceed in Forma Pauperis and Supporting Pauper's Affidavit and Notice of Appeal" [Dkt. 5] did not contain the financial information required by LCvR3.3(a) ("An applicant who seeks leave to proceed without prepayment of the filing fees must, at the time of initiating the civil action, suit or proceeding, or appeal from a judgment in a civil action, submit a motion to proceed in forma pauperis on the form approved by this Court and supplied by the Court Clerk upon request. Failure to use such form or to furnish the Court with the equivalent information required by the form may result in the motion being stricken.>"). On May 13, 2004, the undersigned United States Magistrate Judge entered an Order denying Plaintiff's Motion to Proceed *In Forma Pauperis* and granted Plaintiff until July 13, 2004, to pay the required filing fee. [Dkt. 6]. Plaintiff filed an appeal of the Order

on June 2, 2004. [Dkt. 8]. The District Court affirmed the Magistrate Judge's Order on June 4, 2004, finding Plaintiff's objections untimely and devoid of merit. [Dkt. 9]. Plaintiff appealed the District Court's Order to the United States Tenth Circuit Court of Appeals on June 22, 2004.[Dkt. 10]. On May 25, 2005, the Tenth Circuit entered Judgment affirming the judgment of the District Court. *Lister v. Department of the Treasury Jo Anne B. Barnhart*, 408 F.3d 1309 (10th Cir. 2005). Plaintiff has filed nothing further in this case, nor has she paid the requisite filing fee.

Pursuant to LCvR3.3(e), in the event a motion for leave to proceed *in forma pauperis* is denied, the filing party has twenty (20) days, unless a different time is specified by the Court, within which to pay the required filing fees. Failure to pay the filing fees by the date specified, to seek a timely extension within which to make the payment, or to show cause in writing by the date specified for payment shall be cause for dismissal of the action without prejudice to refiling. Therefore, the undersigned United States Magistrate Judge hereby RECOMMENDS dismissal without prejudice to refiling of this case.

In accordance with 28 U.S.C. §636(b) and Fed.R.Civ.P. 72(b), a party may file specific written objections to this report and recommendation. Such specific written objections must be filed with the Clerk of the District Court for the Northern District of Oklahoma within ten (10) days of being served with a copy of this report.

If specific written objections are timely filed, Fed.R.Civ.P. 72(b) directs the District Judge to:

make a de novo determination upon the record, or after additional evidence, of any portion of the magistrate judge's disposition to which specific written objection has been

made in accordance with this rule. The district judge may accept, reject, or modify the recommended decision, receive further evidence, or recommit the matter to the magistrate judge with instructions.

Fed.R.Civ.P. 72(b); see also 28 U.S.C. § 636(b)(1).

The Tenth Circuit has adopted a “firm waiver rule” which “provides that the failure to make timely objections to the magistrate’s findings or recommendations waives appellate review of factual and legal questions.” *United States v. One Parcel of Real Property*, 73 F.3d 1057, 1059 (10th Cir. 1996) (quoting *Moore v. United States*, 950 F.2d 656, 659 (10th Cir. 1991)). **Only a timely specific objection will preserve an issue for de novo review by the District Court or for appellate review.**

SUBMITTED this 19th day of July, 2006.


FRANK H. McCARTHY
UNITED STATES MAGISTRATE JUDGE